

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



*Original Affidavit of Filing*

**74-1685**

To be argued by  
STEPHEN M. BEHAR

---

---

**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

**Docket No. 74-1685**

---

UNITED STATES OF AMERICA,

*Appellee,*

—v.—

JOSEPH CHARLES MANGER,

*Defendant-Appellant.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

---

---

**BRIEF FOR THE APPELLEE**

---

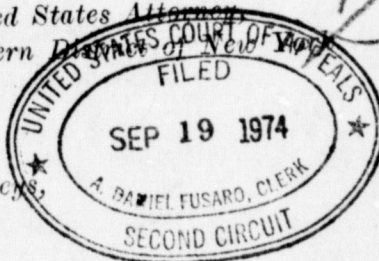
---

DAVID G. TRAGER,  
*United States Attorney,  
Eastern District of New York*

RAYMOND J. DEARIE,  
STEPHEN M. BEHAR,  
*Assistant United States Attorneys,  
Of Counsel.*

---

---



## TABLE OF CONTENTS

	PAGE
Preliminary Statement .....	1
Statement of Facts .....	2
The Sale .....	2
The Arrests .....	5
Christos' Testimony .....	6
ARGUMENT:	
The cross-examination of Spiro Christos was prop- erly limited by the District Court .....	8
CONCLUSION .....	11

### TABLE OF CASES

<i>United States v. Aquillar</i> , 387 F.2d 625 (2d Cir. 1967) .....	9
<i>United States v. Alberti</i> , 470 F.2d 878 (2d Cir. 1972), <i>cert. denied</i> , 411 U.S. 919 (1973) .....	9
<i>United States v. Bowe</i> , 360 F.2d 1 (2d Cir. 1966), <i>cert.</i> <i>denied</i> , 385 U.S. 961, 1042 (1967) .....	9
<i>United States v. Campbell</i> , 426 F.2d 547 (2d Cir. 1970) .....	10
<i>United States v. Kaufman</i> , 453 F.2d 306 (2d Cir. 1971) .....	9
<i>United States v. Owens</i> , 263 F.2d 720 (2d Cir. 1959) ....	10
<i>United States v. Provo</i> , 215 F.2d 531 (2d Cir. 1954) ....	9
<i>United States v. Semensohn</i> , 421 F.2d 1206 (2d Cir. 1970) .....	9
<i>United States v. Sposato</i> , 446 F.2d 779 (2d Cir. 1971) .....	9



**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

**Docket No. 74-1685**

---

UNITED STATES OF AMERICA,

*Appellee,*

—v.—

JOSEPH CHARLES MANGER,

*Defendant-Appellant.*

---

**BRIEF FOR THE APPELLEE**

---

**Preliminary Statement**

Joseph Charles Manger appeals from a judgment of conviction of the United States District Court for the Eastern District of New York (Costantino, J.) entered May 10, 1974. The judgment followed a jury verdict of guilty on three counts of an indictment charging him with violations of Title 21 United States Code, Section 841(a)(1) (possession and distribution of controlled substances). Appellant was sentenced to concurrent terms of five years imprisonment plus three years special parole on each count, pursuant to Title 18 United States Code, Section 4208(a)(2). Appellant is free on bail pending the appeal.

The indictment, returned June 20, 1972, charged appellant and Spiro Christos with distributing 9,360 amphetamine tablets (Count One), and with possessing, with intent

to distribute, 14,040 amphetamine tablets and 28.98 grams of cocaine (Counts Two and Three). Counts Four and Five of the indictment charged appellant with possessing, with intent to distribute, 8.7 grams of cocaine and thirty-five (35) L.S.D. tablets (21 United States Code, Section 841(a)(1)). Counts Four and Five were dismissed following a pre-trial suppression hearing which resulted in the Trial Court's granting the appellant's motion to suppress the introduction of the subject matter of those counts.

Appellant does not challenge the sufficiency of the evidence against him. The sole argument presented on this appeal is whether the Trial Court properly limited the cross-examination of a Government accomplice witness by not allowing defense counsel to question the witness about a prior arrest which did not result in a conviction and about a misdemeanor guilty plea which resulted in a conditional discharge.

## **Statement of Facts**

### **The Sale**

On May 16, 1972, appellant, Joseph Charles Manger, received a telephone call from co-defendant Spiro Christos. Christos asked if appellant still had available for sale a part of the large quantity of amphetamines and cocaine that appellant had recently brought with him from California. Appellant assured Christos that the drugs were still available. Christos promised to call the following day with a specific order (62-63). Christos' phone call to appellant had been preceded by a conversation between Christos and his neighbor, William Puchelt. Christos was unaware that Puchelt was then an informant of the Bureau of Narcotics and Dangerous Drugs (72-73).

The following day, again after tag to Puchelt,\* Christos called appellant and told him that his neighbor wanted to purchase 15,000 amphetamines and an ounce of cocaine. Appellant hesitated, stating that he could only supply 10,000 amphetamines, as other purchasers had already been promised the remainder of appellant's supply. Christos beseeched appellant to fill the order, explaining that the purchaser was his neighbor, known to him for some months, that the purchaser already had the cash, and that it was a firm deal. Appellant agreed to supply the requested amount. They then discussed price, appellant offering quantity discounts and Christos insuring that the price to be quoted Puchelt included a two hundred dollar (\$200.00) commission for himself, to be paid by appellant (75). They finally decided upon a price of \$2,500 for both the 25,000 amphetamines and the ounce of cocaine.

During this period Puchelt was in contact with Special Agents of the Bureau of Narcotics and Dangerous Drugs. In the early afternoon of May 17, 1972 one of these agents met with Puchelt and gave him twenty-five hundred dollars (\$2,500.00) in official government funds, so that Puchelt could demonstrate to his neighbor Christos his ability to buy the drugs (145-46).

Late that afternoon Christos again called appellant to make last minute arrangements for the transaction (77-78). Shortly thereafter Christos and his wife left the apartment house and entered their blue Volkswagen, while Puchelt entered his white Chevrolet (78-79). Puchelt followed the Christos's to Manger's house located at 137-75 45th Avenue, Queens, New York.

---

\* Though Christos' conversation with Puchelt at this time were in furtherance of the uncharged conspiracy between the appellant and Christos, Judge Costantino ruled that Christos' testimony as to the substance of these conversations was inadmissible (76).

Special Agents of the Bureau of Narcotics and Dangerous Drugs followed Christos' and Puchelt's cars from their apartment house in Long Beach to appellant's house in Queens (161-62). In the meantime other agents had succeeded in locating appellant's house on 45th Avenue in Queens (31-31a).

Christos, followed by Puchelt, arrived at the area of appellant's house at 6:15 that evening. Both cars, under observation by Special Agents, entered a parking lot adjacent to the house (34, 80, 169). Christos and his wife went to the front door of the house and were greeted by appellant. Once inside Mrs. Christos went into the living room and joined appellant's co-tenant, Jeffry Ryan, while appellant directed Christos to appellant's bedroom (80-81, 146). Once upstairs, Christos asked if he could bring Puchelt in to meet appellant. Appellant replied that he did not want to meet Puchelt and that Christos should bring the drugs out to the buyer. Appellant then left Christos in the bedroom and returned shortly with all the drugs. He then measured out 10,000 amphetamine pills, placed them in a plastic bag, then in a box, and gave the box to Christos. Christos put the box under his coat. As Christos left the house, appellant instructed him to show Puchelt the amphetamines and collect the money (82-86).

Christos walked to his own car and signaled Puchelt to join him. Inside Christos's Volkswagen they had a conversation and Puchelt examined the amphetamines. They then exited the Volkswagen and walked to Puchelt's car, where Puchelt placed the pills in the trunk of his car (87-88, 147). Christos returned to the house alone and again went up to appellant's bedroom (89). Christos explained that Puchelt refused to pay for the drugs until all had been delivered. Appellant, obviously annoyed,



demanding payment. Christos then gave appellant four hundred eighty dollars (\$480.00) of his own money as security for the drugs. Appellant then gave Christos the additional 15,000 amphetamines and the ounce of cocaine. The amphetamines were wrapped in a brown paper bag which Christos carried under his arm. Christos placed the cocaine in his jacket pocket (88-90). He and appellant then walked to the side door. Christos again left the house, walked to his car with the amphetamines under his arm (37), and motioned Puchelt to join him. There Christos showed the additional drugs to Puchelt. Puchelt and Christos then placed the amphetamines in the trunk of Christos' car (94).

### **The Arrests**

As soon as Christos had placed the second package of amphetamines in the trunk of his car, Puchelt gave a pre-arranged signal and the surveilling agents closed in and arrested Christos (94, 163). The arresting agents seized the amphetamines from both cars and the cocaine from Christos' pocket (39, 95, 148, 163-64). Agents McElynn and Scharlatt then went to the front door of the house with Christos in tow (42, 149). Agent McElynn knocked on the door, heard the sound of people running about and immediately forced his way inside. Both agents then ran upstairs. Scharlatt apprehended appellant in his bedroom and placed him under arrest. In the bedroom, Scharlatt also recovered the four hundred eighty dollars (\$480.00) previously given to appellant by Christos (149-50).\*

---

\* As Agent Scharlatt was gathering up the money, part of which was stuffed between appellant's mattress and bed frame, he also discovered an additional 8.7 grams of cocaine. This cocaine was the subject of Count Four of the Indictment. Following a pre-trial suppression hearing, Judge Costantino ruled that this cocaine was inadmissible as its discovery "did not come within the ambit of the 'plain view' exception . . ." because the "view was not within the agent's immediate view: rather it was dis-

[Footnote continued on following page]

### Christos' Testimony

Following a two day suppression hearing, the trial commenced on March 11, 1974. Prior to jury selection the Government turned over to defense counsel certain "3500" material including a copy of Spiro Christos' arrest record (3). Three items appeared on Christos' arrest record.

The first was a August 6, 1970 arrest in Loudenville, New York for criminal possession of a certain instrument and for criminal possession of a dangerous drug in the sixth degree. No disposition of these charges was listed on the arrest record. At the outset of Christos' cross-examination appellant's trial counsel attempted to cross-examine the witness about this arrest. Following objection, a voir dire examination of Christos revealed that he had been stopped on Loudenville, New York on August 6, 1970 for driving an improperly lit vehicle. A search of the vehicle revealed the presence of a single leaf and brass lamp parts, screwed together making up a make shift pipe. Christos was then arrested on the above charges. Laboratory examination revealed that the leaf contained no proscribed substance. Criminal charges against Christos were dismissed and he paid a fine for the traffic violation (102-106).

The second arrest listed occurred on February 19, 1971 for possession of dangerous drugs and for maintaining premises for the use of narcotics. These charges resulted in a May 11, 1971 guilty plea to possession of dangerous drugs and a June 30, 1971 sentence to three years probation. During his direct examination Christos volunteered testi-

---

covered after the mattress had been raised" (Trial Court's Memorandum and Order, March 1, 1974). Additionally, the admission of thirty-five LSD tablets, the subject of Count Five of the Indictment, was likewise suppressed by Judge Costantino. These tablets were discovered while the agents were searching for Mrs. Christos in a detached garage. They found the garage loaded with cartons of pharmaceutical supplies. On top of one of these cartons they discovered the tablets wrapped in silver foil.

mony as to his prior conviction for possession of marijuana, the sentence he received therefore, and the fact that he was still on probation as a result of that sentence at the time of the commission of the subject crime (71-72). Nine pages of cross-examination were devoted to Christos' prior narcotics conviction, during which time he was asked why his arrest in the present case did not lead to a violation of the probationary term he then was serving as a result of that conviction (114-123).

The last item on Christos' arrest record was an October 16, 1971 arrest for possession of a weapon, a knife. This arrest resulted in a December 13, 1972 guilty plea to the misdemeanor of attempted possession of a dangerous weapon; followed by a January 31, 1973 conditional discharge. Prior to the opening statements, the Government requested a preliminary ruling as to the inadmissibility of this conviction as being without the scope of proper cross-examination. The Trial Court reserved decision until immediately prior to Christos' taking the stand the following day. At that time, the Trial Court ruled that defense counsel could not cross-examine Christos on this charge (3-5, 55-59).

The only item not recorded on Christos' arrest record was his arrest in the instant case. During his direct examination Christos explained to the jury that he had been indicted in this case, had pled guilty to one of the three counts for which he had been charged, and was awaiting sentence on that plea (98-100). During cross-examination Christos was questioned about the fact that his wife was also arrested, but never indicted, in this case (123-26); that he faced a possible fifteen year term of imprisonment as a result of his guilty plea (120-21); and that he intended to buy narcotics for his own use on the day of his arrest (132-34).\*

---

\* The only other form of illegal activity that Christos had engaged in, the purchase of amphetamines and cocaine from appellant during a seven month period immediately prior to their arrest, was kept from the jury on appellant's motion.



## ARGUMENT

**The cross-examination of Spiro Christos was properly limited by the District Court.**

(1)

The appellant contends initially that the trial judge committed reversible error by not allowing defense counsel to cross-examine Spiro Christos about a "narcotics" arrest on August 6, 1970 in Loudenville, New York.

During a *voir dire* examination of Christos by defense counsel, Christos explained that he was arrested, after being stopped for a traffic violation (having a rear tail light missing) for criminal possession of certain instruments and criminal possession of dangerous drugs in the 6th degree (102).<sup>\*</sup> Christos stated that the "instruments" were brass lamp parts which were screwed together to make pipes (103-105) and that the suspected "drug" was shown by chemical analysis to be a crumpled leaf (105-106). Christos received a fine for the traffic offense and the other charges were dismissed (105-106).

Following this hearing, the trial judge concluded that the arrest in Loudenville did not result in a conviction and, therefore, was not a proper subject of cross-examination. This ruling is consistent with the well-established law in this Circuit. "It is settled that in a trial a witness' acts

---

<sup>\*</sup> The two arrests referred to on page seven of Appellant's Brief are in fact references to this single arrest. Additionally, appellant's assertion that the "instruments" which were the subject of that arrest could have been used to "make up a hypodermic needle" (Appellant's Brief p. 7) is without the slightest support in the record.

of misconduct are not admissible to impeach his credibility unless the acts resulted in the obtaining of a conviction." *United States v. Semensohn*, 421 F.2d 1206, 1208 (2d Cir. 1970). *Accord*, *United States v. Sposato*, 446 F.2d 779 (2d Cir. 1971); *United States v. Aquillar*, 387 F.2d 625 (2d Cir. 1967). Thus the trial court's ruling excluding cross-examination on the Loudenville arrest was correct and was not an abuse of its wide discretion to control cross-examinations.

(2)

Appellant next contends that he should have been permitted the opportunity to cross-examine Christos on the subject of his plea of guilty to a charge of attempted possession of a dangerous weapon—a knife. Christos had received a conditional discharge as a result of his guilty plea. The Trial Court ruled that the misdemeanor plea had "nothing to do with truth or veracity" and, therefore, was not a proper matter for cross-examination (59). See *United States v. Alberti*, 470 F.2d 878 (2d Cir. 1972), *cert. denied*, 411 U.S. 919 (1973).

The ruling below was entirely proper. It is clear in this Circuit that a witness may not be impeached by evidence of former crimes unless those crimes resulted in a conviction of a felony or a misdemeanor evidencing moral turpitude. *United States v. Kaufman*, 453 F.2d 306, 311 (2d Cir. 1971). *Accord*, *United States v. Provoo*, 215 F.2d 531 (2d Cir. 1954). This rule applies to both defendant and non-defendant witnesses. Compare *United States v. Bowe*, 360 F.2d 1 (2d Cir. 1966), *cert. denied*, 385 U.S. 961, 1042 (1967), with *United States v. Provoo*, *supra*. Appellant does not contend that the possession of the knife was a crime involving moral turpitude. Instead, appellant contends that the Trial Court's refusal to allow cross-examination on this

subject denied him the opportunity to expose a possible "deal" between Federal and state authorities and, therefore, limited his examination of Christos' motives to lie. Despite the Government's unequivocal representation to the contrary (58), appellant asserts that the Federal authorities *might* have assisted Christos in avoiding a probation violation or in securing the conditional discharge.

In pursuing this argument, appellant apparently fails to recognize that the limits to be placed on cross-examination fall within the sole discretion of the trial court. *United States v. Owens*, 263 F.2d 720 (2d Cir. 1959). As this Court has observed, "In determining whether the trial judge has abused his discretion in limiting the introduction of such evidence, the issue is whether the jury was otherwise in possession of sufficient information concerning formative events to make a 'discriminating appraisal' of a witness' motives and bias." *United States v. Campbell*, 426 F.2d 547, 550 (2d Cir. 1970), citing *Gordon v. United States*, 344 U.S. 414, 417 (1953). In this connection, appellant surely ignores the fact that he had at his disposal sufficient ammunition to conduct a thorough and effective cross-examination of the Government's witness. Christos, of course, admitted in detail his participation in the events which triggered appellant's arrest and prosecution. He admitted to the jury that he had pled guilty to one count of the indictment and had not yet been sentenced on that plea. He admitted that although his wife had been arrested with him, she had not been indicted and, in addition, his probation had not been revoked despite his arrest and prosecution. More importantly, Christos admitted that he previously had been convicted of possession of marijuana, which admission was entirely consistent with the defense theory that it was Christos, not appellant, who was the source of the amphetamines and cocaine that was seized outside appellant's home. With all this information before them, the

jury simply chose to believe Christos as well as the testimony of the surveilling agents. Appellant's attempts to discredit Christos through further cross-examination based on his arrest for a traffic violation and misdemeanor plea were properly foreclosed by the Trial Court.

## CONCLUSION

**The judgment of conviction should be affirmed.**

Respectfully submitted,

DAVID G. TRAGER,  
*United States Attorney,  
Eastern District of New York.*

RAYMOND J. DEARIE,  
STEPHEN M. BEHAR,  
*Assistant United States Attorneys,  
Of Counsel.\**

---

\* The United States Attorney's Office wishes to acknowledge the assistance of John Phillip Eiseman in the preparation of this brief. Mr. Eiseman is a third year law student at Hofstra University Law School.



Man

## AFFIDAVIT OF MAILING

STATE OF NEW YORK  
COUNTY OF KINGS  
EASTERN DISTRICT OF NEW YORK, ss:

\_\_\_\_\_DEBORAH J. AMUNDSEN\_\_\_\_\_, being duly sworn, says that on the 19th  
day of September 1974, I deposited in Mail Chute Drop for mailing in the  
U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and  
State of New York, a two copies of the Brief for the Appellee  
of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper  
directed to the person hereinafter named, at the place and address stated below:

Daniel P. Hollman, Esq.

27 East 39th Street

New York, N.Y. 10016

Sworn to before me this  
19th day of September 1974

*Arene B. Cohen*

Notary Public, State of New York  
No. 24-0683965  
Qualified in Kings County  
Certificate filed in New York County  
Commission Expires March 30, 1975

*Deborah J. Amundsen*

DEBORAH J. AMUNDSEN

ger!

hal

SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at 10:30 o'clock in the forenoon.

Dated: Brooklyn, New York,  
\_\_\_\_\_, 19\_\_\_\_

United States Attorney,  
Attorney for \_\_\_\_\_

To:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attorney for \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIR:

PLEASE TAKE NOTICE that the within is a true copy of \_\_\_\_\_ duly entered herein on the \_\_\_\_ day of \_\_\_\_\_, in the office of the Clerk of the U. S. District Court for the Eastern District of New York,  
Dated: Brooklyn, New York,  
\_\_\_\_\_, 19\_\_\_\_

United States Attorney,  
Attorney for \_\_\_\_\_

To:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attorney for \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Action

No. \_\_\_\_\_

**UNITED STATES DISTRICT COURT  
Eastern District of New York**

—Against—  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

United States Attorney,  
Attorney for \_\_\_\_\_  
Office and P. O. Address,  
U. S. Courthouse  
225 Cadman Plaza East  
Brooklyn, New York 11201

Due service of a copy of the within \_\_\_\_\_  
\_\_\_\_\_ is hereby admitted.

Dated: \_\_\_\_\_, 19\_\_\_\_

Attorney for \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



RT